

AMENDED IN ASSEMBLY APRIL 23, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 162

Introduced by Assembly Member Holden

January 23, 2013

An act to add Section 65964.5 to the Government Code, relating to telecommunications facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 162, as amended, Holden. Wireless telecommunications facilities.

The Planning and Zoning Law authorizes the legislative body of any county or city to adopt ordinances that, among other things, regulate the use of buildings, structures, and land as between industry, business, residences, and open space. Existing law, the federal Middle Class Tax Relief and Job Creation Act of 2012, prohibits a state or local government from denying an eligible facilities request, as defined, for a modification of an existing wireless tower or base station that does not substantially change the tower or base station.

This bill would prohibit a local government from denying an eligible facilities request, as defined, for a modification of an existing wireless telecommunications facility *or structure* that does not substantially change the physical dimensions of the wireless telecommunications facility *or structure*, as specified. The bill would require a local government to act on an eligible facilities request within ~~45~~ 90 days of receipt of a request, as specified. The bill would prohibit a local government from requiring proof of gap in coverage as part of the

approval of an eligible facilities request. By adding to the duties of a local government, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature hereby finds and declares all of*
2 *the following:*

3 *(a) Nearly one in every three Californians communicates only*
4 *via a cellular device and does not own or operate a landline*
5 *telephone.*

6 *(b) Of the 240,000,000 calls to telephone number 911 for*
7 *emergency assistance placed nationwide each year, 70 percent*
8 *now originate from cellular devices.*

9 *(c) In 2010, 5 percent of all 911 calls originating from cellular*
10 *devices were dropped, resulting in 8,400,000 dropped 911 calls.*

11 *(d) Recognizing the public's shift toward cellular telephone use,*
12 *the Legislature passed Senate Bill 1375 (Chapter 332 of the*
13 *Statutes of 2010), authorizing telephone corporations to deactivate*
14 *911 emergency service from any landline telephone not subscribing*
15 *to paid telephone service.*

16 *(e) Given the increased reliance on cellular phones, maintaining*
17 *signal strength and call reliability for 911 calls from cellular*
18 *telephones is critical to protecting public safety and saving lives*
19 *of Californians.*

20 *(f) The Final Report of the National Commission on Terrorist*
21 *Attacks Upon the United States (known as the 9/11 Commission*
22 *Report) identified the lack of coordination among first responder*
23 *agencies and communication challenges in the 9/11 attacks and*
24 *emphasized the need for uniform and reliable communications for*
25 *all first responders.*

(g) *The federal Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96) creates a framework for the public sector to partner with commercial providers to leverage the private sector's investments in broadband technologies to efficiently deploy an interoperable broadband network for public safety.*

(h) *The federal Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96) allocated seven billion dollars (\$7,000,000,000) for grants to states to build the nationwide public safety broadband network.*

(i) *The Federal Communications Commission has found that delays by local governments in approving ministerial requests have delayed the implementation of next-generation broadband services for consumers and first responders.*

(j) *It is the intent of the Legislature to increase network capacity on existing wireless structures in order to serve the needs of safety personnel and the people of the state.*

SECTION 1.

SEC. 2. Section 65964.5 is added to the Government Code, to read:

65964.5. (a) Notwithstanding any other law, and pursuant to Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. Sec. 1455), a local government shall approve and ~~may~~ *shall* not deny any eligible facilities request for a modification of an existing wireless telecommunications facility *or structure* that does not substantially change the physical dimensions of the wireless telecommunications facility *or structure*.

(b) The failure to act on an eligible facilities request within ~~45~~ *90* days of receipt of a request shall be deemed an approval of the request. The ~~45~~ *90* days shall be tolled if the request is determined to be incomplete. If the request is determined to be incomplete, the local government shall comply with subdivision (c) of Section 65943 of the Government Code.

(c) A local government shall not require proof of gap in coverage as part of the approval of an eligible facilities request.

(d) For purposes of this section, the following definitions shall apply:

(1) *"Collocation" means the mounting of the wireless telecommunications facility and related equipment on an existing tower, building, or structure for the purpose of transmitting or receiving signals for telecommunications or public safety services.*

1 ~~(1)~~

2 (2) “Eligible facilities request” or “request” means any request
3 for modification of an existing wireless telecommunications facility
4 *or collocation on an existing structure* that involves any of the
5 following:

6 (A) Collocation of upgraded transmission equipment.

7 (B) Removal of transmission equipment.

8 (C) Replacement of transmission equipment.

9 (D) *Collocation and deployment of transmission equipment*
10 *necessary to construct or maintain public safety broadband*
11 *communication systems.*

12 (3) “Public safety broadband communications system” means
13 *any regional interoperable communications system, the nationwide*
14 *public safety broadband network, the first responder analog-D*
15 *block, or any other government-operated communications system*
16 *used by first responders or emergency management systems.*

17 ~~(2)~~

18 (4) “Substantially change” means any of the following:

19 (A) The mounting of the proposed antenna on the wireless
20 telecommunications facility *or structure* would increase the
21 existing height of the wireless telecommunications facility by more
22 than 10 percent, or by the height of one additional antenna array
23 with separation from the nearest existing antenna not to exceed 20
24 feet, whichever is greater, except that the mounting of the proposed
25 antenna may exceed the size limits set forth in this subparagraph
26 if necessary to avoid interference with existing antennas.

27 (B) The mounting of the proposed antenna would involve the
28 installation of more than the standard number of new equipment
29 cabinets for the technology involved, not to exceed four equipment
30 cabinets, or more than one additional equipment shelter.

31 (C) The mounting of the proposed antenna would involve adding
32 an appurtenance to the body of the wireless telecommunications
33 facility *or structure* that would protrude from the edge of the
34 wireless telecommunications facility more than 20 feet, or more
35 than the width of the wireless telecommunications facility at the
36 level of the appurtenance, whichever is greater, except that the
37 mounting of the proposed antenna may exceed the size limits set
38 forth in this subparagraph if necessary to shelter the antenna from
39 inclement weather or to connect the antenna to the wireless
40 telecommunications facility via cable.

1 ~~(D) The mounting of the proposed antenna would involve~~
2 ~~excavation outside the current wireless telecommunications facility~~
3 ~~site, defined as the current boundaries of the leased or owned~~
4 ~~property surrounding the wireless telecommunications facility and~~
5 ~~any access or utility easements currently related to the site.~~

6 *(D) The eligible facility request fails to comply with all existing*
7 *aesthetic requirements imposed by a local government for the*
8 *specific facility subject to the request. Nothing in this section shall*
9 *be construed to require that any new aesthetic enhancements to*
10 *be made to an eligible facility that were not existing requirements*
11 *at the time the eligible facility request was made.*

12 ~~(3)~~
13 (5) “Wireless telecommunications facility” means equipment
14 and network components, including towers, utility poles,
15 transmitters, base stations, and emergency power systems that are
16 integral to providing wireless telecommunications services.

17 ~~SEC. 2.~~

18 SEC. 3. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.